

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting an application for a desert land entry, N 23977.

Affirmed.

1. Desert Land Entry: Applications -- Desert Land Entry: Water Right

A desert land application is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate underground water or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

APPEARANCES: James R. Hardcastle, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of July 26, 1982, the Nevada State Office, Bureau of Land Management (BLM), held for rejection desert land application N 23977 of James R. Hardcastle, subject to correction of certain deficiencies in the application within 30 days. The deficiencies were that the application was not accompanied by a plan of irrigation nor by evidence of a water right. The water right showing could be accomplished by evidence that an application for an underground water permit had been filed with the State Engineer, or by evidence that the applicant had procured a source of sufficient water to irrigate the irrigable portions of the lands he sought to enter under the Desert Land Laws. As no response was made by Hardcastle, BLM issued its decision of September 10, 1982, rejecting the application N 23977.

Hardcastle appealed, saying only that he did not have time to get a water permit application filed with the water board before BLM rejected his desert land filing.

The Desert Land Act, 43 U.S.C. § 321 (1976), provides that the right to use water for reclamation of desert land shall depend upon a bona fide appropriation of sufficient water necessary to irrigate and reclaim the land sought.

The pertinent regulation, 43 CFR 2521.2(d), provides that no desert land application will be allowed unless accompanied by evidence satisfactorily showing that the intending entryman has acquired the right to permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, so far as then possible, appropriate steps looking to the acquisition of such a water right. The application of appellant states only that he expects to irrigate the land by water produced from a well. No information was given concerning the proposed irrigation system, or that sufficient water could be produced by a well.

The Department has consistently held that a desert land application without evidence of a water right and a plan of irrigation must be rejected. Applications for desert land entry on arid land not accompanied by evidence of appropriate steps to obtain a permanent right to use underground water to irrigate the cultivable land within the proposed entry are properly rejected. Louis Bors, A-28415 (July 14, 1961). An application to make desert land entry in Nevada is properly rejected where the applicant, who proposes to irrigate the land by means of a well, makes no showing whatsoever that, at the time of filing of his application, he had taken any action to initiate the right to appropriate underground water. Vernon Casper Hall, A-28511 (Mar. 14, 1961). An application for desert land entry which is not accompanied by evidence of a water right, as required by the Department's regulations, must be rejected. Rockwell A. Davis, Pedro O. Garcia, A-28071, A-28081 (Oct. 28, 1959). A desert land application is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show at the time of the filing of his application that he has acquired a right from the State to appropriate underground water or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right. Stanley C. Cheledinas, A-27985 (Aug. 3, 1959). An application for desert land entry which is not accompanied by any evidence that the applicant has a contractual right to the use of water to irrigate his entry or any assurance that he will be able to obtain such water is properly rejected. Joseph W. Huntsman, A-27679 (Sept. 1958).

The action by BLM to reject this desert land application was proper. That action, however, is not prejudicial to the right of appellant to file a complete application when he has initiated steps to obtain a water right, and has a plan for irrigation of the land.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

